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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,288	02/07/2000	THOMAS ECKEL	MO-5494/LEA	1739

7590 08/06/2002  
BAYER CORPORATION  
100 BAYER ROAD  
PITTSBURGH, PA 15205-9741

EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 08/06/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-14

# Office Action Summary

Application No.  
09/485,288

Applicant(s)  
Eckel et al.

Examiner  
Szekely

Group Art Unit  
1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- ☒ Responsive to communication(s) filed on 6/18/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-6, 8-10, 14-17 is/are pending in the application.
- ☐ Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-6, 8-10 and 14-17 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☒ All ☐ Some\* ☐ None of the:
- ☒ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

### DETAILED ACTION

1. The final rejection imposed in Paper #7 is withdrawn by the examiner.

Prosecution is reopened.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The term "very finely divided" in claim 16 is a relative term, which renders the claim indefinite. The term "very finely divided" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Less than 200 nm is acceptable.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application

Art Unit: 1714

being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-6, 8-10, and ~~14~~<sup>15</sup>-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckel et al. 5,672,645.

P.S.  
8/2/02

6. Eckel et al. disclose polycarbonate, ABS, a blend of monomeric and oligomeric phosphates and fluorinated polyolefin in claim 1, additives in claim 4, an average particle diameter for the ABS of 0.05-2, preferably 0.1-0.6 microns, which encompasses applicants' claimed range, in column 6, lines 19-20. Mineral compounds of undetermined particle sizes are shown in column 10, lines 1-4, and there is no reason to believe that they are not very finely divided. Applicants' claims are not novel.

**Claim Rejections - 35 USC § 103**

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-6, 8-10 and ~~14~~<sup>15</sup>-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckel et al. 5,672,645 in view of Bodinger et al. 5,849,827.

P.S.  
8/2/02

9. Eckel et al. has been discussed already. Bodinger et al. teach, in claim 1, a polycarbonate, other polymers and extremely finely divided inorganic powder. The composition of the inorganic powders is shown in claims 6-8. The other polymers are listed in claims 11-16. For PTFE, see column 9, lines 57-67, for particle size of graft copolymer see column 5, line 11-13. Oligomeric phosphate flame retardants can be found in column 9, lines 9-12, while monomeric ones are claimed in claim 19. It would

Art Unit: 1714

have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the inorganic minerals having the extremely fine particle size, used by Bodiger et al., in the composition of Eckel et al., in order to improve the flame proofing of the composition.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is 703-308-2460. The examiner can normally be reached on Tuesday-Friday 7:00 a.m.-5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-873-9311 for regular communications and 703-872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
August 2, 2002